

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

IN RE PRADAXA)	MDL No. 2385
(DABIGATRAN ETEXILATE))	3:12-md-02385-DRH-SCW
PRODUCTS LIABILITY)	Judge David R. Herndon
LITIGATION)	

This Document Relates to:

Rapp v. Boehringer Ingelheim Pharmaceuticals, Inc. et al., No. 3:13-cv-50149-DRH-SCW

ORDER GRANTING MOTION TO DISMISS

HERNDON, Chief Judge:

This matter is before the Court on Boehringer Ingelheim Pharmaceuticals Inc.'s ("BIPI") motion to dismiss the plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The plaintiff alleges that she was prescribed Pradaxa on February 1, 2010 (Doc. 2 ¶ 41). However, Pradaxa was not approved by the Food and Drug Administration until October 19, 2010. As a result, BIPI contends, the plaintiff could not have been prescribed in February 2010. BIPI claims that, as a matter of fact and law, there can be no claim of personal injury based on the date of prescription as alleged in the plaintiff's complaint.

The plaintiff's responsive pleading was due by September 23, 2013. It is now February 2014, and the plaintiff has not responded or objected to BIPI's motion in any way.

The Court may consider the plaintiff's failure to respond as an admission on the merits. *See SDIL-LR 7.1(c).* ("Failure to timely file a response to a motion may, in the Court's discretion, be considered an admission of the merits of the motion."). Further, the Seventh Circuit has "consistently held that a failure to respond by the nonmovant as mandated by the local rules is an admission." *Smith v. Lamz*, 321 F.3d 680, 683 (7th Cir. 2003). *See also Chelios v. Heavener*, 520 F.3d 678, 687 (7th Cir. 2008) ("[L]ocal rules streamline litigation and save litigants, lawyers and courts time and money."). The Court exercises its discretion to apply Local Rule 7.1(c) and considers the plaintiff's failure to respond to BIPI's motion to dismiss an admission on the merits of the motion. *See SDIL-LR 7.1(c).*

Therefore, BIPI's motion to dismiss is GRANTED. The matter is dismissed without prejudice.

SO ORDERED:

Digitally signed by
David R. Herndon
Date: 2014.02.06
16:40:42 -06'00'

Chief Judge
United States District Court

Date: February 6, 2014